?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 18.07.2018

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

+W.P.(MD).No.15658 of 2018
and
W.M.P.(MD).No.14055 of 2018

#P.Gladious ... Petitioner

Vs.
$1. The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

2. The District Educational Officer,
Kuzhithurai,
Kanaykumari District.

3. The District Educational Officer,
Thiruvattar,
Kanyakumari District.

4. M.J.K.M.M.S.C.Higher Secondary School,
represented by its Correspondent,
Christurajapuram, Marthandam Post,
Kanyakumari District 629 165.

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the second respondent herein in A.Thi.Mu. File No.2847/A4/2018 dated 31.05.2018, quash the same and further direct the first respondent herein to approve forthwith the appointment of the petitioner as BT Assistant (Social Science) in the third respondent school from 02.04.2018 onwards with salary and other attendant benefits.

!For Petitioner : Mr.E.V.N.Siva
^For R1 to R3 : Mrs.S.Srimathy
Special Government Pleader

:ORDER

The prayer sought for in the writ petition is for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the second respondent in A.Thi.Mu. File No.2847/A4/2018, dated 31.05.2018 and quash the same and further direct the first respondent to approve forthwith the appointment of the petitioner as B.T. Assistant (Social Science) in the third respondent School from 02.04.2018 onwards with salary and other attendant benefits.

2. Heard Mr.E.V.N.Siva, learned counsel appearing for the petitioner and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents 1 to 3.

3. Since no adverse order is going to be passed against the fourth respondent, notice to the fourth respondent is dispensed with.

4. The learned counsel appearing for the petitioner would submit that, in the fourth respondent School, there had been a sanctioned post of B.T.Assistant in Social Science subject, where one Saraswathy was working till 31.03.2018 and she retired and relieved from duty on superannuation on 31.03.2018. In the vacancy arose due to the said incumbent-s superannuation, the petitioner was appointed on 02.04.2018 by the fourth respondent School as B.T. Assistant (Social Science). The said appointment had been sent with a proposal to the second respondent for approval on 09.05.2018. However, the second respondent, on 31.05.2018, has returned/rejected the said proposal by citing two reasons. According to them, the first reason was the fourth respondent School must attach a certificate stating that there are no excess vacancies in the Schools run by the same Management of the fourth respondent School and also a -No Objection Certificate- obtained from the Chief Educational Officer concerned should be produced.

5. The learned counsel appearing for the petitioner would submit that, both the reasons are unsustainable as the issue has been settled long back that no such certificate from the Management can be insisted upon the minority institution and also the -No Objection Certificate- from the Chief Educational Officer cannot be insisted upon. Therefore, the learned counsel for the petitioner would submit that the impugned order is liable to be quashed and the resubmitted proposal made by the petitioner on 04.07.2018 is to be considered by the respondents.

6. I have heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents would submit that since number of excess posts are available in other schools run by the same Management, instead of redeploying those teachers, who are working in excess posts, the Management of the fourth respondent School has been making a fresh appointment like one of the present appointment of the petitioner and therefore, that reason was given to the second respondent in the impugned communication. At any rate, the second respondent, without insisting upon -No Objection Certificate- from the Chief Educational Officer concerned, would decide the same and pass orders on the resubmitted proposal made by the petitioner dated 04.07.2018, on merits, within a time frame.

7. Considering the said submissions made by the learned counsel for both sides and perused the two reasons cited by the respondents through the impugned communication as both the reasons are unsustainable as the issue has already been decided in number of cases, this Court is inclined to quash the said impugned order.

8. In the result, the impugned order passed by the second respondent, dated 31.05.2018 is quashed and the matter is remanded back to the first respondent and since the fourth respondent had already sent the resubmitted proposal with regard to the appointment of the petitioner on 04.07.2018, the same shall be considered by the first respondent, who is the competent authority to pass orders, for appointment of the petitioner and such order shall be passed within a period of six weeks from the date of receipt of a copy of this order.

9. With these directions, the Writ Petition is ordered accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

To
1. The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

2. The District Educational Officer,
Kuzhithurai,
Kanaykumari District.

3. The District Educational Officer,
Thiruvattar,
Kanyakumari District.